

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

CLERK'S OFFICE

NOTICE OF FILING

DOCKET NO. 2019-__-S

Joint Application for Approval of the Sale of Assets and Transfer of Facilities and Service Territory from Moore Sewer, Inc. to Spartanburg Sanitary Sewer District.

Moore Sewer, Inc. ("Moore Sewer") and the Spartanburg Sanitary Sewer District ("SSSD") have applied for Approval of Moore Sewer's sale of assets and transfer of facilities and service territory to SSSD, a Special Purpose District established by the State of South Carolina. The proposed transfer pertains to sewer collection systems that serve customers in the Linville Hills and Madera Village subdivisions in Spartanburg County. Moore Sewer desires to sell to SSSD the assets described in the Application, including but not limited to all easements and all rights and privileges contained therein and operating authority attendant to the affected areas described in the Application. The Application was filed with the Public Service Commission of South Carolina ("the Commission") pursuant to 10 S.C. Code Ann. Regs. 103-504 and 103-704 and other applicable rules and regulations.

Moore Sewer states the transaction is necessary and in the public interest because it is a small closely held corporation with limited access to capital and its system requires significant upgrades. SSSD is able and willing to make the necessary upgrades to the system and ensure continued adequate service to Moore Sewer's customers.

According to the Application, Moore Sewer charges its customers in Linville Hills a Base Facilities Charge of \$27.93 per month and their pro-rata share of SSSD's charges for sewerage treatment. Moore Sewer divides SSSD's monthly bill for treatment services equally among its customers in Linville Hills and charges them without mark-up. SSSD bills Moore Sewer \$22.33 per month plus \$0.675 per 100 gal. for sewerage treatment. SSSD's volume rate of \$0.675 is composed of a \$0.483 treatment charge plus a \$0.192 collection charge and has been in effect for Moore Sewer since January of 2019. Moore Sewer has not passed through the \$0.192 collection charge to its customers but has charged the previous rate of \$0.483 per 100 gal. If this Application is not approved, Moore Sewer states it will have to pass-through the full SSSD volume rate of \$0.675 per 100 gal treated. Moore Sewer bills its customers in Madera Village the monthly base charge of \$27.93. Madera Village customers are billed directly by SSSD for sewer treatment charges at the base rate of \$5.70 per month and \$0.675 per 100 gal. of their individual water usage with Spartanburg Water.

If this Application is approved, SSSD will charge all of Moore Sewer's customers a \$5.70 base charge and \$0.675 per 100 gal. based on their individual monthly water consumption. SSSD will also charge a monthly capital recoupment charge of \$24.00 per customer account until it is able to recoup its capital costs in acquiring and rehabilitating this system. Once such costs are recouped (SSSD estimated approximately 24 months) SSSD will remove this charge and bill customers only its base and volume sewer charges thereafter.

A copy of the company's Application can be found on the Commission's website at www.psc.sc.gov under Docket No. 2019-__-S. Additionally, a copy of the Application is available from the office of Charles L.A. Terreni, Terreni Law Firm, LLC, 1508 Lady Street, Columbia, S.C. 29201 or the office of Richard L. Whitt, Whitt Law Firm, LLC, 401 Western Lane, Suite E, Irmo, S.C. 29063.

Any person who wishes to participate in this matter as a party of record, should file a Petition to Intervene in accordance with the Commission's Rules of Practice and Procedure on or before ____, 2019, by filing the Petition to Intervene with the Commission, by providing a copy to the Office of Regulatory Staff and by providing a copy to all parties of record. For the receipt of future Commission correspondence, please include an email address in the Petition to Intervene. ***Please refer to Docket No. 2019-__-S and mail a copy to all other parties in this docket.*** Any person who seeks to intervene and who wishes to testify and present evidence at the hearing, if scheduled, should notify, in writing, the Commission; the Office of Regulatory Staff at 1401 Main Street, Suite 900, Columbia, South Carolina 29201; and the company at the above address, on or before ____, 2019. ***Please refer to Docket No. 2019-__-S.***

A public hearing, if scheduled, will be held in Columbia, South Carolina in the offices of the Commission located at 101 Executive Center Drive, Suite 100, Columbia, South Carolina 29210, for the purpose of receiving testimony and other evidence from all interested parties regarding this Application. The time and date of this hearing will be furnished to all interested parties at a later date.

For the most recent information regarding this docket, including changes in scheduled dates included in this Notice,

please refer to www.psc.sc.gov and *Docket No. 2019-__-S*.

Persons seeking information about the Commission's procedures should contact the Commission at (803) 896-5100 or visit its website at www.psc.sc.gov.

Public Service Commission of South Carolina • Attention: Clerk's Office • 101 Executive Center Drive, Suite 100 • Columbia, SC 29210

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2019-__-WS

IN RE: Joint Application for Approval of
the Sale of Assets and Transfer of
Facilities, Territory from Moore Sewer,
Inc. to Spartanburg Sanitary Sewer
District.

APPLICATION

Moore Sewer, Inc. (“Moore Sewer”) and the Spartanburg Sanitary Sewer District (“SSSD”) (collectively, “Joint Applicants”), pursuant to S.C. Code Regs. 103-504 and 103-704, and other applicable rules and regulations, jointly apply to the Public Service Commission of South Carolina (“Commission”) for approval of a sale of assets, including sewer facilities, territories, and certificates of public convenience and necessity from Moore Sewer to SSSD (“Application”). In support of this Application, the Joint Applicants respectfully show the Commission as follows:

1. Moore Sewer is a South Carolina corporation that owns and operates a sewer service utility that provides wastewater collection service to approximately 284 customers in the Linville Hills subdivision and 116 customers in the Madera Village subdivision in Spartanburg County.
2. Moore Sewer is a “public utility” as defined in S.C. Code Ann. §58-5-10(4), providing sewer service to the public for compensation in certain areas of South Carolina.
3. SSSD is a special purpose district established by the State of South Carolina and is not regulated by the Commission. *See* S.C. Code § 6-11-1210 *et seq.*

4. SSSD currently provides wastewater treatment services to Moore Sewer on a wholesale basis.

5. SSSD's sister entity, The Commissioners of Public Works for the City of Spartanburg, d/b/a Spartanburg Water System ("Spartanburg Water"), is a municipal corporation established by the City of Spartanburg and provides water service in the Linville Hills and Madera Village subdivisions.

6. The Joint Applicants have entered into an asset purchase agreement ("Agreement") dated August 28, 2019 whereby SSSD will acquire the wastewater systems, service territories, personal property, real property, easements, governmental authorizations (including National Pollutant Discharge Elimination System permits, and other permits), and certain other property necessary for the operation of the Moore Sewer systems. A copy of the Agreement is attached hereto and incorporated herein by reference as Exhibit "A."

7. If the Commission approves the Application, Moore Sewer's customers will receive consolidated services from Spartanburg Water and SSSD. They will have one customer service department and receive a single bill.

8. Joint Applicants seek expedited approval of this Application and a waiver of any requirement for a formal hearing if, after notice, no substantial opposition arises therefrom.

9. Joint Applicants request they be allowed to provide notice to affected customers by mail.

10. All communications or inquiries regarding this Application should be directed to the individuals listed below:

Charles L.A. Terreni

Terreni Law Firm, LLC
1508 Lady Street
Columbia, SC 29201
(803)771-7228
(803) 771-8778 (F)
charles.terreni@terrenilaw.com

Attorney for Moore Sewer, Inc.

Richard L. Whitt
Whitt Law Firm, LLC
401 Western Lane, Suite E
Irmo, SC 29063
(803) 995-7719
Richard@RLWhitt.law

Attorney for Spartanburg Sanitary Sewer District

11. The Joint Applicants submit that the sale of assets from Moore Sewer to SSSD is in the public interest. Moore Sewer is a small closely held corporation with limited access to capital and its system requires significant upgrades. SSSD is able and willing to make the necessary upgrades to the system and ensure continued adequate service to Moore Sewer's customers.

12. If the Application is approved, all of Moore Sewer's customers will become customers of SSSD. Moore Sewer will discontinue the provision of sewer service to the public and will no longer have authorized service territories or the related certificates of public convenience and necessity heretofore authorized to them by this Commission.

13. Moore Sewer's current schedule of rates and charges was approved by this Commission in Order No. 2018-445, dated June 27, 2018.

14. Moore Sewer presently charges its customers in Linville Hills a Base Facilities Charge of \$27.93 per month and their pro-rata share of SSSD's charges for sewerage treatment. Moore Sewer divides SSSD's monthly bill for treatment services

equally among its customers in Linville Hills and charges them without mark-up. SSSD bills Moore Sewer \$22.33 per month plus \$0.675 per 100 gal. SSSD's volume rate of \$0.675 is composed of a \$0.483 treatment charge plus a \$0.192 collection charge and has been in effect for Moore Sewer since January of 2019. However, Moore Sewer has not passed through the \$0.192 collection charge to its customers. Instead, Moore Sewer has been charging its customers for SSSD treatment at the previous rate of \$0.483 per 100 gal. If this Application is not approved, Moore Sewer will have no choice but to pass-through the full SSSD volume rate.

15. Moore Sewer bills its customers in Madera Village the monthly base charge of \$27.93. Madera Village customers are billed directly by SSSD for sewer treatment charges at the base rate of \$5.70 per month and \$0.675 per 100 gal. of their individual water usage with Spartanburg Water.

16. If this Application is approved, SSSD will charge all of Moore Sewer's customers a \$5.70 base charge and \$0.675 per 100 gal. based on their individual monthly water consumption. SSSD will also charge a monthly capital recoupment charge of \$24.00 per customer account per month until it is able to recoup its capital costs in acquiring and rehabilitating this system. Once such costs are recouped – estimated to be approximately 24 months – SSSD will remove this charge and bill customers only its base and sewer charges thereafter.

17. The near-term rate impact for customers in Linville Hills and Madera Village will be minimal. Some customers in Linville Hills may benefit from rates based on their individual water consumption. After the monthly recoupment charge is eliminated virtually

all customers should see reduced bills and benefit from an improved system with reduced inflow and infiltration.

18. Closing of the transaction is expressly contingent, among other things, upon Joint Applicants obtaining the approval of the Commission for the sale of the aforementioned assets of Moore Sewer to SSSD. No transfer of any assets has occurred, nor shall any such transfer occur, unless and until such approval is obtained.

19. After approval of the Application and closing of the transaction, Moore Sewer will relinquish its Certificate of Public Convenience and Necessity and requests permission to cancel the performance bond on file with the Commission.

20. Based upon the foregoing, it is in the public interest that the Agreement be approved.

WHEREFORE, the Joint Applicants respectfully request that the Commission take the following action:

- A. Approve the sale of the assets currently used to serve the customers of Moore Sewer, including the transfer of sewer systems, territory, certificates, permits, powers, and privileges.
- B. Allow Moore Sewer to cancel the performance bond on file with the Commission upon closing the transaction.
- C. For such other and further relief as this Commission deems just and proper.

Respectfully submitted,

s/ Charles L.A. Terreni

Charles L.A. Terreni
Terreni Law Firm, LLC
1508 Lady Street
Columbia, SC 29201
(803) 771-7228
(803) 771-8778 (facsimile)
Email: charles.terreni@terrenilaw.com

Attorney for Moore Sewer, Inc.

s/Richard L. Whitt

Richard L. Whitt
Whitt Law Firm, LLC
401 Western Lane, Suite E
Irmo, SC 29063
(803) 995-7719
Email: Richard@RLWhitt.law

*Attorney for Spartanburg Sanitary Sewer
District.*

Columbia, South Carolina

August 30, 2019

EXHIBIT A
ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** ("Agreement") is made and executed as of August __, 2019 (the "Effective Date") by and between **MOORE SEWER, INC.**, a South Carolina corporation ("Seller") and **SPARTANBURG SANITARY SEWER DISTRICT**, a political subdivision of the State of South Carolina ("Buyer").

WITNESSETH:

WHEREAS, Seller is the owner of all right, title and interest in the wastewater collection system infrastructure, appurtenances thereto and rights-of-way in connection therewith, located in and around the Linville Hills and Madera subdivisions in Spartanburg County, South Carolina (the "Wastewater Collection Systems");

WHEREAS, Seller desires to sell, convey, transfer, assign and deliver to Buyer the Assets and the Assumed Liabilities (each as defined below); and

WHEREAS, Buyer desires to purchase, acquire, assume and accept from Seller the Assets and the Assumed liabilities (each as defined below) on the terms and conditions and for the consideration hereinafter set forth.

NOW, THEREFORE, in consideration of, and in reliance upon, the mutual covenants, agreements, representations and warranties herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. **Sale and Purchase of Assets.**

(a) Seller agrees to sell, convey, transfer, assign and deliver to Buyer, and Buyer agrees to purchase, acquire, assume and accept from Seller, all of the Assets. For purposes of this Agreement, "Assets" shall mean all assets owned by Seller that are exclusively associated with, or used in the operation of, the Wastewater Collection Systems, except for the Retained Assets (as defined in Section 1(b) below), including but not limited to:

(i) All licenses, permits, consents, authorizations, approvals and certificates of any regulatory, administrative or other governmental agency or body relating to the Wastewater Collection Systems, to the extent the same are transferable;

(ii) Goodwill and all rights to customers served by the Wastewater Collection Systems as of the Closing Date (each, a "Customer", and collectively, "Customers"), Customer lists, Customer street addresses, and telephone numbers of the Customers;

(iii) A current list of Customers, billing records for each Customer, and any other documents or data in Seller's possession relating to Customer accounts;

(iv) Copies of all books of account, accounting records, files, papers and records used in or relating to the operation or maintenance of the Wastewater Collection Systems;

(v) Any existing wastewater collection lines, mains, laterals, transmission pipes or other impoundments, rights-of-way, and any and all other interests in real property, as further described on Exhibit A attached hereto and incorporated herein, which form a part of or contribute in any way to the operation or maintenance of the Wastewater Collection Systems; and

(vi) All agreements, applications, invoices and other contractual arrangements for wastewater collection between Seller and any Customer, including, without limitation, any accounts subject to service termination or physical disconnection (full copies of all such agreements, contractual arrangements and service termination notices shall be delivered by Seller to Buyer no later than ten (10) days following the Effective Date).

(b) “Retained Assets” shall mean all of Seller’s right, title, and interest in the assets described on Exhibit B attached hereto and incorporated herein. No portion of the Retained Assets shall be sold, conveyed, transferred, assigned or delivered to Buyer pursuant to this Agreement, and all such Retained Assets shall remain the property of Seller after the Closing Date.

2. **Purchase Price.** The purchase price for the Assets shall equal One Hundred, Fifty-five Thousand Dollars (\$155,000.00) (the “Purchase Price”), payable to Seller in immediately available funds, to an account or accounts designated by Seller prior to the Closing Date (as hereinafter defined).

3. **Liabilities of Seller.** Except for the Assumed Liabilities (as defined below), Buyer shall not assume or otherwise be liable for any liabilities, obligations or commitments of Seller, whether now existing or hereafter arising (the “Retained Liabilities”). Buyer shall assume, be liable and responsible for, and accept assignment from Seller and thereafter pay, perform or discharge when due all of the following liabilities, obligations and commitments (the “Assumed Liabilities”):

(a) Any and all obligations under any licenses, permits, consents, authorizations, approvals and certificates transferred by Seller to Buyer hereunder;

(b) Any and all obligations under any agreements, applications, invoices and other contractual arrangements transferred by Seller to Buyer hereunder;

(c) Any and all obligations to provide services to Customers from and after the Closing Date; and

(d) Any and all obligations and liabilities related to the Assets arising from or relating to any event, circumstance or condition occurring after the Closing Date.

4. **Closing.** Subject to the terms and conditions of this Agreement, the sale and purchase of the Assets and the assumption of the Assumed Liabilities, all as contemplated hereby, shall take place at a closing (the "Closing") to be held at the offices of Buyer in Spartanburg, South Carolina, or such other place as Buyer and Seller may mutually agree, on or before October 28, 2019, provided that all the terms and conditions of this Agreement have been satisfied as provided for herein. Buyer and Seller shall agree upon the specific closing date that is at the end of a wastewater collection supply service period for billing purposes, but that is also on or before December 2, 2019, as stated above (hereafter, the "Closing Date").

5. **Conditions to Closing.**

(a) **Conditions to Obligations of Buyer.** Unless waived by Buyer in its sole discretion, all obligations of Buyer under this Agreement are subject to the following conditions:

(i) all representations and warranties of Seller contained in this Agreement and in all documents delivered pursuant hereto or in connection with the transactions contemplated hereby shall be true and accurate as of the date when made and shall be deemed to be made again at and as of the Closing Date and shall then be true and accurate in all material respects;

(ii) Seller shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by them prior to or on the Closing Date; and

(iii) Seller shall have obtained all consents, approvals, orders or authorization of, or registrations, declarations or filings with, the South Carolina Public Service Commission, the South Carolina Office of Regulatory Staff, and any other governmental entity, required in connection with the execution, delivery or performance of this Agreement (the "Regulatory Approvals"), if any.

(b) **Conditions to Obligations of Seller.** Unless waived in writing by Seller in its sole discretion, all obligations of Seller under this Agreement are subject to the following conditions:

(i) all representations and warranties of Buyer contained in this Agreement and in all documents delivered pursuant hereto or in connection with the transactions contemplated hereby shall be true and accurate as of the date when made and shall be deemed to be made again at and as of the Closing Date and shall then be true and accurate in all material respects;

(ii) Buyer shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date; and

(iii) All Regulatory Approvals, if any, shall have been obtained.

6. **Closing Deliveries by Seller.** At the Closing, Seller shall deliver to Buyer the following:

- (a) sole and exclusive possession of the Assets;
- (b) an executed general warranty deed in the form attached hereto as Exhibit C (the "General Warranty Deed") conveying to Buyer title to the Assets free and clear of all liens, security interests and encumbrances;
- (c) an executed bill of sale in the form attached hereto as Exhibit D;
- (d) evidence satisfactory to Buyer that all Regulatory Approvals have been obtained; and
- (e) any other documents required pursuant to this Agreement or reasonably requested by Buyer.

7. **Closing Deliveries by Buyer.** At the Closing, Buyer shall deliver to Seller the following:

- (a) the Purchase Price, and
- (b) any other documents required pursuant to this Agreement or reasonably requested by Seller.

8. **Representations and Warranties of Seller.** Except as provided herein, Seller makes no representations or warranties of any kind or nature, and particularly makes no warranty or covenant of fitness for particular purpose or covenant or warranty of merchantability of the Assets. The Assets are being sold on an **AS IS, WHERE IS** basis. Seller hereby represents and warrants to Buyer as follows:

(a) **Organization.** Seller is a corporation validly existing and in good standing under the laws of the State of South Carolina. Seller has full corporate power and lawful authority to enter into and perform the provisions of this Agreement and all agreements and documents to be delivered by Seller in connection herewith.

(b) **Authority.** Seller has the full right, power and authority to convey the Assets to Buyer in accordance with the terms and conditions hereof. This Agreement, when executed and delivered by Seller, will be a valid and binding obligation of Seller in accordance with its terms.

(c) **No Impediments.** Neither the execution or delivery of this Agreement nor any documents or agreements delivered or to be delivered in connection herewith by Seller, nor their performance by Seller, will (i) result in the breach of any term or provision of, or will constitute a default under, any indenture, mortgage, license agreement, organizational document, or other agreement or instrument to which Seller is a party or by which Seller or the Assets are bound; (ii) except for the Regulatory Approvals, require Seller or any of its affiliates to make any filing with, or obtain any

consent from, any governmental or regulatory authority; or (iii) conflict with, violate or result in the breach by Seller of any law applicable to Seller with respect to the sale of the Assets.

(d) Title. Seller has, and on the Closing Date will have, good and marketable title to all of the Assets, free and clear of all liens, pledges, security interests or other encumbrances of any nature whatsoever, whether fixed or contingent, and whether due or to become due. Title and all risk of loss with respect to the Assets shall remain exclusively with Seller until the Closing.

(e) Judgments. Seller is not a party to or subject to any pending lawsuits or, to Seller's knowledge, any threatened lawsuits, nor judgment, order or decree enjoining any of them in respect of, or the effect of which is to limit, restrict, regulate or prohibit the sale the Assets.

(f) Tax Returns. All tax returns and reports of Seller required by law with respect to the Assets have been duly filed. All taxes, assessments, and other fees and governmental charges upon the Assets, or upon the Seller which might affect the Assets after the Closing Date, which are due and payable, have been paid, and there are no claims pending against Seller for deficient or past due taxes and, to Seller's knowledge, no unassessed tax deficiencies.

(g) Employees. Seller has no employees and there is no contract or plan that is an "Employee Benefit Plan" (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, as modified by regulations thereunder) that is or has been maintained by Seller covering former employees, if any, or to which Seller has been obligated to contribute.

(h) Environmental. (i) Seller has not received from any governmental authority any written notices within the past three (3) years asserting any violation of any applicable environmental laws and regulations in connection with its ownership, use, maintenance, and operation of the Assets, (ii) there is no written claim pending or, to the knowledge of Seller, threatened against the Assets relating to environmental laws or regulations, (iii) to Seller's knowledge, Seller has not released or otherwise disposed of any Contaminants (as hereinafter defined) in material violation of environmental law or regulation at, on, under or around the immediate vicinity of the Assets, (iv) Seller has no knowledge of any conditions or circumstances associated with the Assets which may prevent or interfere with material compliance with any applicable environmental laws and regulations, (v) to Seller's knowledge, Seller has not transported, disposed of, or otherwise released or arranged for the transportation, disposal or release of any Contaminant from the Assets to any other location in material violation of any environmental law or regulation, and (vi) Seller has neither placed nor, to Seller's knowledge, permitted the placement of any aboveground storage tanks, polychlorinated biphenyl, asbestos or asbestos containing material, or groundwater monitoring wells on the Assets. For purposes of this Agreement, the term "Contaminant" shall include without limitation: any waste, pollutant, chemical, hazardous material, hazardous substance, toxic substance, hazardous waste, solid waste, petroleum, or petroleum-

derived substance or waste (regardless of specific gravity), or any constituent or decomposition product of any such pollutant, material, substance, or waste regulated under any environmental law or regulation.

Seller's representations and warranties are for the exclusive benefit of the Buyer and shall not be for the benefit of any other person or entity. Seller shall not have any liability for the falsity of any representation or the breach of any warranty to the extent the Buyer, its officers, directors, employees, agents or contractors, (1) had knowledge of such falsity or breach when made by Seller or (2) fails to give written notice to Seller of such falsity or breach as soon as Buyer acquires knowledge thereof. Where a representation or warranty is made as to "Seller's knowledge", a representation shall be deemed false or a warranty breached only if a supervisory employee of Seller that has a direct functional or operational responsibility for the Assets has actual knowledge of the falsity of such representation or the breach of such warranty.

9. **Representations and Warranties of Buyer.** Buyer represents and warrants to Seller as follows:

(a) **Organization.** Buyer is a Special Purpose District, validly existing and in good standing under the laws of the State of South Carolina. Buyer has full power and lawful governmental authority to enter into and perform the provisions of this Agreement and all agreements and documents to be delivered by Buyer in connection herewith.

(b) **Authority.** Buyer has the full right, power and authority to purchase the Assets, from Seller in accordance with the terms and conditions hereof. This Agreement, when executed and delivered by Buyer, will be a valid and binding obligation of Buyer in accordance with its terms.

(c) **No Impediments.** Neither the execution or delivery of this Agreement nor any documents or agreements delivered or to be delivered in connection herewith by Buyer, nor their performance by Buyer, will (i) result in the breach of any term or provision of, or will constitute a default under, any indenture, mortgage, license agreement, organizational document, or other agreement or instrument to which Buyer is a party or by which Buyer is bound; (ii) except for the Regulatory Approvals, require Buyer or any of its affiliates to make any filing with, or obtain any consent from, any governmental or regulatory authority; or (iii) conflict with, violate or result in the breach by Buyer of any law applicable to Buyer with respect to the purchase of the Assets.

10. **Indemnification.**

(a) **Indemnification by Seller.** Seller covenants and agrees that, notwithstanding the payment of the Purchase Price and the delivery of instruments of conveyance, from and after the Closing Date, Seller will indemnify, defend and save and hold the Buyer and its affiliates, officers, directors, agents, employees, successors and assigns (the "**Buyer Indemnified Parties**") harmless from and against any and all damages, losses, costs, claims, liabilities, causes of action and expenses ("**Buyer Losses**") arising out of or resulting from: (i) any inaccuracy of any representation or the breach of any warranty made by Seller hereunder; (ii) any failure of Seller to duly perform or

observe any term, provision, covenant, agreement or condition under this Agreement, and all agreements delivered in connection with this Agreement, on the part of Seller to be performed or observed; (iii) any Retained Liability; and (iv) any Retained Asset.

(b) Claims Period. The period during which a claim for indemnification by the Buyer Indemnified Parties may be asserted under this Agreement shall begin on the Effective Date and terminate on the date that is three (3) years following the Closing Date. Notwithstanding the previous sentence, a claim for indemnification by the Buyer Indemnified Parties solely with respect to the warranty provided in the General Warranty Deed (in the form attached hereto as Exhibit C), shall begin on the Effective Date and terminate on the date that is ten (10) years following the Closing Date.

11. Operation and Preservation of the Assets During the Pre-Closing Period. Seller covenants and agrees that, except as otherwise consented to in writing by Buyer, for the period beginning as of the Effective Date and ending on the Closing Date (the "Pre-Closing Period"), Seller shall use its commercially reasonable efforts to (i) operate the Assets in the ordinary course, consistent with past practice in all material respects and (ii) preserve the Assets in all material respects.

12. Refund of Security Deposits; Outstanding Accounts Receivable. Seller covenants and agrees that, except as otherwise required to cover any outstanding amounts owed to Seller by a Customer, within sixty (60) days following the Closing Date, Seller shall refund to each Customer the security deposit, if any, paid by such Customer to Seller. After Closing, the Buyer agrees to note on its billing to current Spartanburg Water System ("SWS") customers certain past due amounts due to Seller; provided, however, the Buyer is only required to bill SWS customers for outstanding and unpaid balances due to Seller for current charges (from Seller's final billing cycle). If Buyer collects amounts due to Seller from such billing, it will remit the same to Seller no later than fifteen (15) days after the end of the month in which the funds are received.

13. Taxes. Seller shall be responsible for and pay at Closing, and indemnify and hold Buyer harmless from, any and all transfer taxes imposed by any tax authority in connection with this Agreement or any transfer of the Assets. The parties shall reasonably cooperate with each other concerning all tax matters, including the filing of all material federal and state tax returns and other governmental filings associated therewith.

14. Notices. All notices, communications, consents and deliveries under this Agreement shall be deemed given: (a) when delivered if delivered personally (including by courier); (b) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (c) on the day of delivery if sent by a nationally-recognized overnight delivery service which maintains records of the time, place and receipt of delivery; or (d) upon receipt of a confirmed transmission, if sent by facsimile transmission, in each case to a party at the applicable address or to such other address as may be furnished in writing by such party to the other:

To Buyer: Sue G. Schneider
 Chief Executive Officer
 Spartanburg Sanitary Sewer District
 Post Office Box 251
 Spartanburg, South Carolina 29304
 Phone: (864) 583-7361
 Fax: (864) 583-3427
 E-mail: sschneider@spartanburgwater.org

With a copy to: T. Alexander Evins
 Partner
 Parker, Poe, Adams & Bernstein, LLP
 100 Dunbar Street, Suite 206
 Spartanburg, South Carolina 29306
 Phone: (864) 253-6101
 Fax: (864) 591-2050

To Seller: Moore Sewer, Inc.
 Ms. Janet Teichman
 P.O. Box 2753
 Spartanburg, SC 29304
 Phone: (864) 582-3335
 Email: mooresewer@gmail.com

With a copy to: Charles L.A. Terreni
 Terreni Law Firm, L.L.C.
 1508 Lady Street
 Columbia, South Carolina 29201
 Telephone (803) 771-7228
 Fax (803) 771-8778
charles.terreni@terrenilaw.com

15. **Bulk Sales.** Each party hereby waives compliance by the parties with any applicable bulk sale or bulk transfer laws of any jurisdiction in connection with the sale of the Assets to Buyer.

16. **Assignment.** Except as explicitly provided herein, neither party may directly or indirectly transfer any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party; provided that either party may assign this Agreement to any affiliate of such party without obtaining the prior written consent of the other party.

17. **Governing Law.** This Agreement shall be deemed to have been entered into and to be performed in the State of South Carolina and shall be governed and construed and enforced in accordance with the laws of such state without regard to conflict of law principles.

18. **Entire Agreement; No Oral Modification.** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior oral and written understandings relating thereto. No modification or termination of this Agreement, nor any waiver of any provision hereof shall be valid or effective unless in writing and signed by the party or parties sought to be charged therewith. No waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other or subsequent breach or condition, whether of like or different nature.

19. **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one or more of the parties as long as each of them has signed one or more of such counterparts.

Signatures to appear on the following page(s)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

SELLER:
MOORE SEWER, INC.

By: 

Name: William Teichman
Its: President

BUYER:

**SPARTANBURG SANITARY SEWER
DISTRICT**

By: _____

Name: Sue G. Schneider
Its: Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

SELLER:
MOORE SEWER, INC.

By: _____
Name: _____
Its: President

BUYER:
**SPARTANBURG SANITARY SEWER
DISTRICT**


By: 
Name: Sue G. Schneider
Its: Chief Executive Officer

EXHIBIT A

Transferred Real Property Rights

[Description to be provided]

EXHIBIT B

Retained Assets

1. All billing systems, computers, software and other information systems
2. The name "Moore Sewer, Inc.", any trademarks, domain names or other intellectual property rights owned or used by Seller
3. All logos and signage owned or used by Seller
4. All deposits with third-party service providers
5. All security deposits received from Customers
6. Any cash on hand
7. **[Real Property - Description to be provided]**
8. Accounts Receivable accrued prior to the Closing Date

Exhibit C

Form of General Warranty Deed

[Form to be provided]

Exhibit D**Form of Bill of Sale****BILL OF SALE**

THIS BILL OF SALE (this "**Bill of Sale**") is made this _____ day of _____ 2019 by Moore Sewer, Inc., a South Carolina corporation ("***Seller***"), for the benefit of Spartanburg Sanitary Sewer District, a political subdivision of the State of South Carolina ("***Buyer***").

WHEREAS, Seller and Buyer have entered into that certain Asset Purchase Agreement dated as of _____, 2019 (the "***Purchase Agreement***"), providing, among other things, that Seller would transfer to Buyer the Assets (used herein as defined in the Purchase Agreement) upon the terms and conditions set forth in the Purchase Agreement.

NOW, THEREFORE, Seller does hereby sell to Buyer all right, title and interest of Seller in and to the Assets TO HAVE AND TO HOLD the Assets unto Buyer, its successors and assigns, to and for their use and benefit forever.

This Bill of Sale shall be governed in all respects by the laws of the State of South Carolina, without regard to such State's conflict of law rules. The exchange of copies of this Bill of Sale by facsimile or electronic transmission shall constitute effective execution and delivery of this Bill of Sale by Seller and may be used in lieu of the original Bill of Sale for all purposes.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be duly executed by its duly authorized officer effective as of the date set forth above.

Moore Sewer, Inc., a South Carolina
corporation

By: _____

Name: _____

Title: _____

DOCKET NO. 2019-____-WS

August 30, 2019